

1 BRADLEY WEIDENHAMMER
2 KIRKLAND & ELLIS LLP
3 300 North LaSalle
4 Chicago IL 60654
5 Telephone: (312) 862-2000
6 Facsimile: (312) 862-2200
7 Email: bradley.weidenhammer@kirkland.com

8 *Attorney for Defendants AMG Services, Inc. and MNE Services, Inc.*
9 *(dba Tribal Financial Services, Ameriloan, UnitedCashLoans,*
10 *USFastCash)*

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AMG Services, Inc., et al.,

Defendants, and

Park 269 LLC, et al.,

Relief Defendants.

Case No.: 2:12-cv-536-GMN-VCF

**JOINT MOTION FOR ENTRY OF
AMENDED CONFIDENTIALITY AND
PROTECTIVE ORDER**

1 Plaintiff Federal Trade Commission (“FTC”) and Defendants AMG Services, Inc.,
2 SFS, Inc., Red Cedar Services, Inc., MNE Services, Inc., Scott A. Tucker, Blaine A. Tucker,
3 AMG Capital Management, LLC, Level 5 Motorsports, LLC, LeadFlash Consulting, LLC,
4 Black Creek Capital Corporation, Broadmoor Capital Partners, LLC, Don E. Brady, Robert
5 D. Campbell, Troy L. Littleaxe, Kim C. Tucker, and Park 269 LLC (collectively,
6 “Defendants”) hereby give notice of their filing of their Joint Motion for Entry of Amended
7 Confidentiality and Protective Order. In support thereof, the parties state the following:
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9 1. In light of the Court’s Order Entering Stipulated Preliminary Injunction and
10 Bifurcation (#296), the parties have moved forward with their document production efforts
11 with respect to Phase I of the litigation.

12 2. The current Confidentiality and Protective Order, entered on September 13, 2012
13 (#173), does not include a specific procedure for the “clawback” of inadvertently produced
14 privileged documents.

15 3. In order to prevent waiver of any applicable privileges and immunities to which
16 the parties are otherwise entitled, the parties have agreed to amend paragraph XII of the current
17 Confidentiality and Protective Order to include a specific “clawback” procedure for
18 inadvertently produced privileged documents.
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20 Wherefore, the parties respectfully request that the Court enter their proposed Amended
21 Confidentiality and Protective Order, attached hereto.
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1 Dated: January 9, 2013

2 /s/ Nikhil Singhvi
3 NIKHIL SINGHVI
4 Federal Trade Commission
5 600 Pennsylvania Ave., NW
6 Mailstop NJ-3158
7 Washington, DC 20580
8 Telephone: (202) 326-3480
9 Facsimile: (202) 326-3629
10 Email: nsinghvi@ftc.gov

11 *Attorney for Plaintiff Federal Trade*
12 *Commission*

13 /s/ Nathan F. Garrett
14 NATHAN F. GARRETT
15 GRAVES BARTLE MARCUS & GARRETT, LLC
16 1100 Main Street
17 Suite 2700
18 Kansas City, MO 64105
19 Telephone: (816) 256-3181
20 Facsimile:
21 Email: ngarrett@gmbglaw.com

22 *Attorney for Defendant Don E. Brady*

23 /s/ Paul C. Ray
24 PAUL C. RAY
25 PAUL C. RAY, CHTD.
26 8670 West Cheyenne Avenue
27 Suite 120
28 Las Vegas, NV 89129
Telephone: (702) 823-2292
Facsimile: (702) 823-2384
Email: paulcraylaw@gmail.com

Attorney for Defendant Troy L. Littleaxe

/s/ Bradley Weidenhammer
BRADLEY WEIDENHAMMER
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: bradley.weidenhammer@kirkland.com

Attorney for Defendants AMG Services, Inc.
and MNE Services, Inc. (dba Tribal Financial
Services, Ameriloan, UnitedCashLoans,
USFastCash)

/s/ Nick J. Kurt
NICK J. KURT
BERKOWITZ OLIVER WILLIAMS SHAW &
EISENBRANDT LLP
2600 Grand Boulevard
Suite 1200
Kansas City, MO 64108
Telephone: (816) 561-7007
Facsimile: (816) 561-1888
Email: nkurt@berkowitzoliver.com

Attorney for Defendants Scott A. Tucker,
Blaine A. Tucker, AMG Capital Management,
LLC, Level 5 Motorsports, LLC, LeadFlash
Consulting, LLC, Black Creek Capital
Corporation, and Broadmoor Capital
Partners, LLC

/s/ Jay Young
JAY YOUNG
MARQUIS AURBACH COFFING
10001 Park Run Drive
Las Vegas, NV 89145
Telephone: (702) 382-0711
Facsimile: (702) 856-8900
Email: j@marquisaurbach.com

Attorney for Defendant Robert D. Campbell

1 /s/ Shilee Mullin
2 SHILEE MULLIN
3 FREDERICKS PEEBLES & MORGAN LLP
4 3610 North 163rd Plz.
5 Omaha, NE 68116
Telephone: (402) 333-4053
Facsimile: (402) 333-4761
Email: smullin@ndnlaw.com

6 *Attorney for Defendants AMG Services,*
7 *Inc.; Red Cedar Services, Inc. dba*
8 *500FastCash; SFS, Inc. dba*
9 *OneClickCash; MNE Services, Inc., dba*
10 *Tribal Financial Services, Ameriloan,*
11 *UnitedCashLoans, USFastCash*


12 /s/ Robert Peter Smith
13 ROBERT PETER SMITH
14 McDOWELL, RICE, SMITH & BUCHANAN
15 605 West 47th Street
16 Kansas City, MO 64112
17 Telephone: (816) 753-5400
18 Fax: (816) 753-9996
19 Email: petesmith@mcdowellrice.com

20 *Attorney for Relief Defendants Kim C.*
21 *Tucker and Park 269 LLC*

22 /s/ David J. Merrill
23 DAVID J. MERRILL
24 DAVID J. MERRILL, P.C.
25 Nevada Bar No. 6060
26 10161 Park Run Drive, Suite 150
27 Las Vegas, NV 89145
28 Telephone: (702) 566-1935
Facsimile: (702) 924-0787
Email: david@djmerrillpc.com

Attorney for Defendants AMG Services, Inc.
and MNE Services, Inc. (dba Tribal Financial
Services, Ameriloan, UnitedCashLoans,
USFastCash)

IT IS SO ORDERED:

29 
30 _____
31 United States Magistrate Judge

32 DATED: 1-11-2013
33 _____

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on the 9th day of January 2013, service of the foregoing *Joint Motion for Entry of Amended Confidentiality and Protective Order* was submitted electronically for filing and/or service with the United States District Court of Nevada. Service of the foregoing document shall be made to all counsel of record via electronic case filing.

/s/ Brad Weidenhammer

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

AMG SERVICES, INC., *et al.*,

Defendants.

2:12-cv -00536-GMN-VCF

[PROPOSED]
AMENDED CONFIDENTIALITY AND
PROTECTIVE ORDER

Before the Court is the parties' Joint Motion for Entry of Amended Confidentiality and Protective Order. Pursuant to Federal Rule of Civil Procedure 26(c), the Court enters the following Amended Confidentiality and Protective Order:

IT IS HEREBY ORDERED that the parties, their representatives, agents, experts, and consultants, and any other interested persons, including non-parties from whom information may be sought in discovery, will be entitled to the benefits of and adhere to the following terms regarding documents, data, and other information and tangible things that are produced, made available for inspection, disclosed, or filed in this case:

I. Parties and non-parties may designate material as "Confidential" pursuant to Paragraph II and be entitled to the protections in accordance with this Order.

II. A producing entity may only designate as "Confidential" any document or other discovery material or response that contains:

A. an individual's Social Security number;

- 1 B. information relating to the past, present, or future physical or mental
2 health or condition of an individual, the provision of health care to an
3 individual, or the past, present, or future payment for the provision of
4 health care to an individual;
- 5 C. any measurable anatomical, physiological, or behavioral characteristic
6 collected or used for purposes of automated identity verification or other
7 types of authentication (e.g., finger prints, palm prints, iris and retina scans,
8 facial characteristics, and signature and voice dynamics); or
- 9 D. an individual's name or address or phone number *in combination with one*
10 *or more of the following*:
- 11 1. date of birth
 - 12 2. driver's license number or other state identification number, or a
13 foreign country equivalent
 - 14 3. military identification number
 - 15 4. passport number
 - 16 5. financial account number
 - 17 6. credit or debit card number
- 18 E. any trade secret or any commercial or financial information which is
19 privileged or confidential.

20 III. "Confidential Information," as used herein, refers to any document, deposition
21 transcript as specified below, or other discovery materials designated "Confidential" pursuant to
22 Paragraph II including all copies, extracts and summaries thereof and the confidential
23 information contained therein.

24 IV. Documents or discovery material may not be deemed Confidential Information,
25 regardless of a party's designation, if such document or discovery material is public. If a party
26 believes that a document or discovery material has been improperly designated as confidential,
27 that party may initiate a meet and confer with the designating party, and if the appropriate
28 designation cannot be resolved, then the dispute may be presented to the Court by the party

1 contending that “Confidential” designation is appropriate. The material will remain confidential
2 during the pendency of the dispute.

3 V. If a producing entity produces material that is entitled to be designated as
4 “Confidential” pursuant to Paragraph II but inadvertently fails to designate it as “Confidential,”
5 that producing entity may within ten (10) calendar days subsequently designate such material as
6 “Confidential” and such material will then be treated as “Confidential” pursuant to this
7 Protective Order.
8

9 VI. If a subpoena recipient produces material and fails to designate certain material as
10 “Confidential” that a party contends is “Confidential,” that party must meet and confer with the
11 other parties regarding the proposed designation. If the parties agree that the material is entitled
12 to “Confidential” designation under Paragraph II, it will be marked “Confidential” and treated as
13 Confidential Information. If the appropriate designation cannot be resolved, then the dispute
14 may be presented to the Court by the party contending that “Confidential” designation is
15 appropriate. The material will remain confidential during the pendency of the dispute.
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17 VII. A party may designate documents or other discovery materials received from
18 another party as Confidential. If the producing party believes that a document or discovery
19 material has been improperly designated as confidential, that party may initiate a meet and
20 confer with the designating party, and if the appropriate designation cannot be resolved, then the
21 dispute may be presented to the Court by the party contending that “Confidential” designation is
22 appropriate. The material will remain confidential during the pendency of the dispute.
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24 VIII. Confidential Information must not be disclosed or distributed to any person or
25 entity other than the following:
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- 1 A. The parties and the attorneys for the parties in this action (including in-
2 house counsel) and their paralegals, clerical, and other assistants who have
3 a clear need therefor in connection with this action;
- 4 B. Persons retained by the parties or counsel for the parties to serve as expert
5 witnesses or otherwise to provide advice to counsel in connection with this
6 action (referred to as “consultants”), provided such persons have agreed to
7 be bound by the terms of this Protective Order;
- 8 C. Stenographers engaged to transcribe depositions or other testimony
9 conducted in this action;
- 10 D. The Court and its support personnel;
- 11 E. A witness during the course of that witness’s testimony or preparation
12 herefor, provided such person has agreed to be bound by the terms of this
13 Protective Order;
- 14 F. Persons, who at the time of disclosure, are employed by the United States
15 Government and work in the Office of the Attorney General or for a
16 federal law enforcement agency, where such disclosure is permitted by 15
17 U.S.C. §§ 57b-2, 46(f) and 46(k) and 16 C.F.R. §§ 4.10 and 4.11, only
18 when such disclosures are made in compliance with the authorizing statute
19 or regulation. Should the FTC wish to disclose Confidential Information,
20 pursuant to the referenced statutes or regulations, to persons other than the
21 above described federal employees, it must provide fifteen (15) calendar
22 days’ notice to the party who designated the information confidential.
23 Should that party object to the disclosure, within eleven (11) calendar days
24 of receipt of the notice, and the issue is not resolved without Court
25 intervention, the FTC may seek permission for such disclosure from the
26 Court. No disclosure of the information at issue will be made over timely
27 objection, absent a Court order authorizing the disclosure; and
- 28 G. A non-party pursuant to a subpoena or Court order, after ten (10) calendar
days prior notice to the party designating the material as Confidential.
The notice must provide to the designating party the identity of the entity
to whom the information is to be produced and a copy of the subpoena or
Court order under which the information is to be produced. Upon the
filing of a Motion to Quash, Motion for Protective Order or any other
similarly styled motion, the subpoena recipient must not produce
documents in response to the subpoena until the relevant motion is finally
resolved.

1 IX. During any deposition noticed in connection with this case, a witness or any
2 counsel may indicate on the record that a question calls for or an answer has disclosed
3 Confidential Information. Such Confidential Information may be so designated either:

4 A. During the deposition, in which case the transcript of the designated
5 testimony will be bound in a separate volume and marked "Confidential
6 Information Governed by Protective Order"; or

7 B. By written notice to the reporter and to all counsel of record, given within
8 ten (10) calendar days after the date of the reporter's written notice to the
9 deponent or its counsel that the transcript is available for review, in which
10 case the reporter and all counsel receiving notice of the designation will be
11 responsible for marking the copies of the transcript in their possession or
12 under their control as directed by the designating party.

13 X. A party filing Confidential Information with the Court, and any pleadings,
14 motions or other papers filed with the Court disclosing Confidential Information must comply
15 with Local Rule 10-5(b) and seek to file the Confidential Information under seal as follows: for
16 Confidential Information attached to or included in dispositive motions, the moving party(ies)
17 must articulate compelling reasons supported by specific facts demonstrating that sealing the
18 document outweighs the public's interest in disclosure; and for Confidential Information
19 attached to or included in non-dispositive motions, the moving party(ies) must articulate good
20 cause supported by specific facts demonstrating that sealing the document outweighs the public's
21 interest in disclosure. Where possible, the parties must use their best efforts to redact
22 Confidential Information, or to designate only the confidential portions of filings with the Court
23 to be filed under seal.

24 XI. In the event that the requesting party disagrees with the designation by the
25 producing entity of any document or discovery materials as "Confidential," the requesting
26 party's counsel may advise counsel for the producing entity in writing of the objection and
27 identify the document or material with sufficient specificity to permit the other to identify it.
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1 Within ten calendar (10) days of receiving this written objection, the producing entity must
2 advise whether the “Confidential” designation will be removed. If the appropriate designation
3 cannot be resolved, then the dispute may be presented to the Court by the party claiming
4 confidentiality, by motion or otherwise as the Court directs. During the pendency of any such
5 dispute, the designated document or material will continue to be treated as Confidential
6 Information.
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8 XII. The protection afforded by this Order in no way affects a party’s or non-party’s
9 right to withhold documents as privileged under the attorney-client privilege, work product
10 immunity, or other privilege or immunity or as otherwise exempted from discovery under Rule
11 26. If such information is nevertheless inadvertently produced, such production shall in no way
12 prejudice or otherwise constitute a waiver of, or estoppels as to, any claim of privilege or work
13 product immunity for such information. If a producing entity has inadvertently produced
14 information subject to a claim of immunity or privilege, that party may request its return through
15 formal written notice to all receiving entities, and in doing so shall provide a privilege log
16 describing the basis for the assertion of the immunity or privilege. Upon such request, all
17 receiving parties shall promptly return or destroy the information for which a claim of
18 inadvertently produced information was made within ten (10) days and treat those materials as if
19 they had been initially withheld from the production. Nothing in this paragraph shall limit the
20 ability of a party to challenge any other party’s assertion of privilege or immunity with respect to
21 any document.
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24 XIII. The Commission must dispose of documents produced pursuant to this Order in
25 compliance with Rule 4.12 of its Rules of Practice entitled, Disposition of Documents Submitted
26 to the Commission. 16 C.F.R. § 4.12. Other parties who receive “Confidential” materials
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1 pursuant to this Order must, within 30 days of the close of this matter, return or destroy such
2 materials and all copies (including electronic, paper or any other form of copy) (at the receiving
3 party's option) and confirm such return or destruction to the producing persons.

4
5 XIV. The provisions of this Protective Order and the obligation to retain the
6 confidentiality of the Confidential Information produced hereunder and dispose of the same,
7 absent written permission or further Order of the Court, will survive and continue to be binding
8 after the conclusion of this action. This Court will retain jurisdiction over the parties to the
9 extent necessary to enforce said obligation.

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11 11th
12 DATED this ____ day in January, 2013.

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14 CAM FERENBACH
15 UNITED STATES MAGISTRATE JUDGE
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